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# THE INTERIM

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OCTOBER 2000

HELENA, MONTANA

VOL. XII NO. 17

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## PRE-SESSION CAUCUSES

Presession Caucus Schedules Set -- Please Read Carefully -- This is new.

After much discussion among senior legislators and legislative leaders, presession caucus dates and times have been readjusted and reset. Senate and House caucuses will be held at different times as noted below. As always, everyone who is elected or involved in a race not settled as reported in the unofficial results will receive an individual invitation to the caucus of their party.

House of Representatives: Republican and Democrat caucuses will be held at 4 p.m. on Friday, November 17.

Senate: Republican and Democrat caucuses will be held at 8 a.m. on Saturday, November 18.

For more information on Democrat and Republican organizational caucuses, contact each caucus leader: Senator Tom Beck (Senate Republicans), Senator Mike Halligan (Senate Democrats), Representative Aubyn Curtiss (House Republicans), or Representative Joe Tropila (House Democrats).

Caucuses for "third parties" can be organized as needed by members of those parties following the election.

## ENVIRONMENTAL QUALITY COUNCIL

EQC Holds Final Meeting...The Environmental Quality Council (EQC) held its final meeting of the interim in Helena on September 11 and 12. The Council completed its work on three interim studies that had been assigned to EQC subcommittees and addressed several other statutory duties of the Council.

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The Departments of Agriculture, Natural Resources and Conservation, and Environmental Quality presented their second biennial reports on agency compliance and enforcement program efforts as required by a 1997 law. Copies of the reports are available at the EQC office. The EQC held a discussion with the executive agencies regarding methods to identify and describe environmental conditions and trends in the future. Velda Welch with the State Library's Natural Resource Information System (NRIS) demonstrated the availability of water resource information on the NRIS website as part of the Council's water policy oversight duties.

The EQC reviewed draft legislative environmental proposals from the Departments of Environmental Quality, Natural Resources and Conservation, Transportation, and Fish, Wildlife, and Parks, and it received updates on the status of the water compact agreement between the Crow Tribe and the state of Montana and on the issue of coal bed methane development in southeastern Montana. The Council heard considerable testimony on the Department of Fish, Wildlife, and Parks' upland game bird enhancement program and pheasant release program. As a result of the discussion, the EQC voted unanimously to request that the Legislative Audit Division conduct an audit of the program and its expenditures. The EQC also heard testimony regarding proposed changes to the state's hazardous material remediation law (CECRA), which resulted from an agenda item discussion of the Lockwood solvent site at a March EQC meeting in Billings. The EQC voted 9-7 to support the proposed changes.

Montana Environmental Policy Act (MEPA ) Study...The Environmental Quality Council adopted the EQC MEPA Subcommittee's final report entitled "Improving the Montana Environmental Policy Act (MEPA) Process" at its July meeting. The MEPA study was requested by the 1999 Legislature through SJR 18.

The EQC voted to support two pieces of legislation as a result of the MEPA study. One bill would provide internal consistency with existing law and require that new MEPA issues first raised in judicial proceedings be remanded back to the executive agency for further review and analysis. The other bill is a joint study resolution to request that the EQC conduct further study and analyze specific MEPA issues that were left unresolved by the SJR 18 study process.

The final report, including all of the findings and recommendations, is available on the EQC website at <http://leg.state.mt.us/Services/lepo/index.htm>. Copies of the final report may also be obtained by contacting the EQC office.

Land Use/Environmental Trends...The EQC voted to request legislation (LC0160) that will provide \$1 million each fiscal year from the general fund for grants to cities, towns, and counties for the development or implementation of growth policies. The EQC also decided to appoint a four-member subcommittee to develop specific performance measures or indicators to be used by the state to identify and describe environmental conditions and trends in air quality, water quality, and invasive species issues.

Eminent Domain Study...The EQC will be sponsoring four pieces of legislation that were brought forward by the Eminent Domain Subcommittee. LC0161 specifies that landowners are not liable for damages to projects on property taken through eminent domain unless they are negligent and also allows for attorney's fees if the landowner is part of a court case and is found to be not liable. LC0162 updates and clarifies the eminent domain statutes and references all areas of the MCA in which eminent domain or public use laws are located. LC0163 states that an easement is the preferred interest to be taken in property in an eminent domain action. LC0164 states that the court must determine appropriate payment for damages to the property taken as well as to any remaining parcel of property that may be adversely impacted by the project.

To view EQC or Subcommittee work plans, agendas, press releases, reports, or minutes from previous meetings, please visit the EQC web site at <http://leg.state.mt.us/services/lepo>. If you have any questions or would like additional information or would like to be placed on the EQC interested persons mailing list, contact Todd Everts by phone at 444-3747 or by e-mail at <teverts@state.mt.us>.

## LEGISLATIVE FINANCE COMMITTEE

LFC To Meet in October...The Legislative Finance Committee (LFC) is scheduled to meet on October 2 and 3. Among the items on the agenda are the following reports.

IT Management Study...The LFC will receive the final report of the Information Technology (IT) Management Study Subcommittee. The report includes these recommendations previously adopted by the LFC:

For the upcoming session, the "LFC recommends that a select subcommittee made up of members of the House Committee on Appropriations and Senate Finance and Claims Committee be appointed to review the Unified Computer Budget Summary; make preliminary policy decisions for dealing with IT budgets from a statewide perspective; set internal service rates for the Information Service Division (ISD) of the Department of Administration (DOA); and make budget decisions on IT-related budget requests that have been identified by the Legislative Fiscal Division during an analysis of the Unified Computer Budget Summary submitted by OBPP."

For 2001 and beyond, the "LFC recommends that the following structure be implemented for governing IT:

- ▶ The legislature should enact "legislative guiding principles" statements to steer the development of IT resources in Montana state government.

- ▶ The legislature should create a Department of Information Technology, using existing staff in the Information Services Division (ISD) of the Department of Administration (DOA). The director of the department should carry the title and function as the Chief Information Officer (CIO) for the state. The CIO and department should be responsible for: developing and maintaining a statewide strategic IT plan; reviewing and approving agency IT plans; establishing statewide policies and standards for IT; evaluating IT budget requests; coordinating the development of shared IT systems and applications; and reporting to the legislature.
- ▶ The legislature should create an Information Technology Board to advise the CIO. The IT board should have its membership and appointing authority included in statute. The IT board should have representatives from all three branches of state government and include representatives for local and federal government and private industry.
- ▶ The legislature should accomplish oversight of IT during the interim with an existing interim standing committee, the Legislative Finance Committee, and during legislative sessions with the Long-Range Planning Subcommittee.
- ▶ IT related governance statutes should be consolidated into one section of law and specific content requirements should be codified for agency and statewide IT strategic plans."

In addition, draft legislation has been prepared and is included in the report. For more information on this study and the recommendations, contact Greg DeWitt or Pam Joehler at the Legislative Fiscal Division (406-444-2986).

Fire Suppression Costs In Montana...The fire season has been particularly difficult this year. For the 2000 fire season, total costs are estimated to be in excess of \$112 million. Of that total, Forest Service and Bureau of Land Management costs are estimated to be \$61.6 million. Thus, the total fire cost for which Montana is responsible is estimated to be \$51.1 million.

The Federal Emergency Management Agency (FEMA) has agreed to pay for 100 percent of Montana's expenses that qualify under FEMA's Fire Suppression Assistance Program. So far, Montana has received \$37.1 million in fire suppression bills that will be reimbursed by FEMA. That will leave a burden of an estimated \$14 million to be funded by the state's general fund. So far this fiscal year, the Department of Natural Resources and Conservation (DNRC) has spent over \$15.4 million for fire suppression efforts, most of which will be reimbursed by FEMA. However, because this has been a difficult and complex fire season, FEMA reimbursement delays are likely to occur. DNRC has suggested that as much as 25 percent of FEMA reimbursements might be delayed until fiscal 2002.

Depending upon timing issues and cost refinement, the supplemental

appropriation that DNRC will request during the 2001 legislative session could range from about \$10 million to over \$19 million. By the time fire season is over, estimates indicate that DNRC will spend at least \$4 million for fire suppression from the Governor's emergency fund. After this additional emergency appropriation spending is taken into account, the general fund could see an impact of \$14 million to \$23 million.

The magnitude of the fires contributed to placing DNRC in a particularly difficult financial position. Because it temporarily uses the Forestry Division's budget to accumulate fire expenditures, lack of spending authority in this budget is creating difficulties. Perhaps the Legislature will examine whether fire suppression funding can be made more efficient.

For more information, contact Gary Hamel at the Legislative Fiscal Division (406-444-2986).

## LEGISLATIVE SERVICES DIVISION

### LEGISLATIVE REFERENCE CENTER

The following memorandums are available from the Legislative Reference Center:

"Retiree Health Costs: Staff Paper #3: Current Statutes Affecting Health Plan Coverage for Public Retirees", Report for the State Administration, Public Employees, Retirement and Veterans' Affairs Committee, Sheri Heffelfinger, June 2000. This report is available at [http://leg.state.mt.us/Reports/Interim\\_Committees/STATE\\_ADMINISTRATION/staffreports.htm](http://leg.state.mt.us/Reports/Interim_Committees/STATE_ADMINISTRATION/staffreports.htm).

"Montana's Human Skeletal Remains and Burial Site Protection Act: Repatriation and Board Reimbursement", memorandum for the Indian Affairs Subcommittee of the Law, Justice, and Indian Affairs Interim Committee, Eddy McClure, August 2000

## REVENUE AND TAXATION COMMITTEE

Local Control of City Transportation Projects ...The Revenue and Taxation Committee met September 15. Representatives from the larger cities in Montana discussed Department of Transportation oversight of city transportation projects supported by state and federal money. They told the Committee that Department process and design standards can have an adverse impact on completion and cost of city projects. They suggested that the Department develop a certification process that would allow cities to adopt local standards for the design and construction of

city streets. Other states such as Washington and Arizona have a process that delegates management of transportation projects to local authorities.

The Department agreed with the concept and will work with local governments as well as with the Federal Highway Administration to develop a certification program. The Department envisions the creation of a local, state, and federal partnership to resolve the issue. The Committee asked that the Department report to the transportation and budget standing committees during the next legislative session and to the Revenue and Taxation Committee during the next interim.

Sen. Bohlinger Presents Proposal for Affordable Housing... Senate Bill No. 349 (Ch. 312, L. 1999) created an affordable housing loan fund to assist low- and moderate-income Montana citizens in obtaining affordable housing. The loan fund is administered by the Montana Board of Housing. The Board may accept contributions, gifts, and grants for deposit into the loan account. However, it is unlikely that these sources of revenue will sufficiently capitalize the account. At the Committee's September 1999 meeting, Mary Brooks, National Housing Trust Fund, presented a brief overview of states that have created housing trust funds and the various sources of revenue used to provide funding. The Committee discussed whether it should involve itself with recommending a dedicated revenue source for the fund. At the December 1999 Committee meeting, Sen. Thomas said that Sen. John Bohlinger was working on a proposal to provide affordable housing and suggested that he be asked to present his proposal to the Committee.

Sen. Bohlinger's proposal is patterned after Michigan legislation. The proposal would establish a partnership between Habitat for Humanity, the Board of Housing, and the Department of Corrections. Prison labor would be used to construct modular homes for delivery across the state. The Board would administer a revolving loan account to provide loans for people qualifying for low-income housing at favorable interest rates. Repayment of the loans would provide the resources for the construction of additional housing. The program would be available to Habitat for Humanity clients as well as to other low- to moderate-income families. Sen. Thomas recommended that the Committee endorse the concept of Sen. Bohlinger's proposal. Chairman Chase Hibbard appointed a subcommittee to prepare a bill draft for Committee consideration. The subcommittee includes Sen. Mignon Waterman, Sen. Thomas, and Rep. Dan Harrington.

Executive Program Planning... Under the auspices of SB 11, the Departments of Transportation and Revenue discussed their respective budget and legislative proposals. The Department of Transportation (MDT) revisions to current law programs include additional funding for contractor payments attributable to federal TEA-21 programs, maintenance of secondary paved roads, and rest area maintenance. New proposals include funding for administrative support for TEA-21 project delivery, a fuel tax evasion and recovery program, and long-range building. One of the issues the MDT and Legislature will have to consider is the stability of the highway state special revenue account if the referendum to replace the existing tax

on light vehicles with registration fees passes in November. The account is funded in part by the new car sales tax, but the measure would repeal that tax and would only provide partial reimbursement for lost sales tax revenue. The Department discussed a variety of legislative proposals.

Department of Revenue (DOR) adjustments to current law include increased costs for the customer service center, maintenance of the software for computer-assisted mass reappraisal, implementation of a new reappraisal cycle, and staff training. The DOR also proposes minor reductions in the number of employees. An important new program is maintenance responsibilities for the geographic information system database developed jointly with the Department of Administration. The DOR also discussed its major legislative proposals.

Committee Gives Final Approval for Bill Drafts...The Committee approved the following bill drafts for introduction during the next legislative session:

- (1) clarify certain provisions of the HB 540 referendum to replace the existing property tax on light vehicles;
- (2) allow an individual income tax credit for a shareholder's pro rata share of taxes paid by an S corporation in another state;
- (3) revise the debt limit provisions for local governments;
- (4) revise the debt limit provisions for elementary and high school districts; and
- (5) allow local authorities to request a lower speed limit, pending an engineering study conducted by the Department of Transportation.

See the September 2000 issue of **THE INTERIM** for prior coverage of these legislative proposals.

Subcommittees Meet in September...The Income Tax Subcommittee met September 14. The Subcommittee was created to look at proposals to address the perception that Montana is a high income tax state and to generally revise and simplify the existing income tax structure. Larry Finch, Department of Revenue, presented an analysis of the impacts of eliminating the deduction for federal income taxes paid and reducing the state's top marginal tax rate from 11%. He also discussed options that would use federal adjusted gross income as the basis for state income tax liability. The Subcommittee asked Finch to look at the cost and tax shifting if the existing top marginal income tax rate were less than 7% under the proposal to eliminate the deduction for federal income taxes paid. The Subcommittee also requested additional information on tying individual income taxes to federal taxable income and the effect of using deductions or credits to offset the tax liability on unemployment income, tip income, retirement benefits, and payments for health insurance and long-term care insurance.

The Motor Vehicle Revenue Distribution Subcommittee also met September 14. The Subcommittee was created to look at ways to simplify the distribution of motor vehicle revenue in the event HB 540 is approved by the electorate. In a display of

remarkable efficiency, the Subcommittee requested the following bill drafts:

- ▶ providing a uniform revenue-neutral distribution of motor vehicle revenue to district courts;
- ▶ providing a uniform revenue-neutral distribution of motor vehicle revenue to the state highway special revenue account;
- ▶ providing that motor vehicle revenue that is distributed on the basis of mill levies go to local mills only; and
- ▶ generally revising the distribution of motor vehicle revenue based on the other proposals.

Penultimate Meeting on October 20... The Committee will meet at 8 a.m. on Friday, October 20 in Room 172 of the State Capitol. The Committee will review national and state economic trends in anticipation of the adoption of preliminary general fund revenue estimates in November. Other agenda items include:

- ▶ a retrospective of SB 11 executive branch agency program review and other interim activities;
- ▶ Department of Revenue report required by SB 111 on intangible personal property;
- ▶ subcommittee reports;
- ▶ report from the Local Government Funding and Structure Committee; and
- ▶ report from the Motor Fuels Advisory Committee.

Subcommittees Meet October 19... The various subcommittees will meet Thursday, October 19, in Helena. Meeting times and agenda items have not been set.

For additional details about Committee activities contact Jeff Martin by calling (406) 444-3064 or by e-mail at <jmartin@state.mt.us>.

## CHILDREN, FAMILIES, HEALTH, AND HUMAN SERVICES COMMITTEE

Committee Holds Final Meeting... The Children, Families, Health, and Human Services Committee held its final meeting of the interim on Thursday, August 17. All Committee minutes, reports, and agendas and a link to Montana Dental Summit Information have been posted to [http://leg.state.mt.us/interim\\_committees/](http://leg.state.mt.us/interim_committees/).

The Committee has also received the report on "Montana's Initiative for the Abatement of Mortality in Infants (MIAMI) Projects on American Indian Reservations in Montana" from the Department of Public Health and Human Services (DPHHS).

DPHHS has also notified the Committee of a METNET teleconference regarding the revision of the Montana Health Agenda 2000 on October 2 from 10 a.m. to 11:30 a.m. Call (406) 444-6788 for your nearest METNET location and site

addresses. The draft revision can also be found at the DPHHS website ([www.dphhs.state.mt.us/hpsd](http://www.dphhs.state.mt.us/hpsd)).

For more information about the Committee, please contact Susan Byorth Fox by phone at (406) 444-3597, by e-mail at <[sfox@state.mt.us](mailto:sfox@state.mt.us)>, or by mail to Legislative Services Division, PO Box 201706, Helena MT 59620-1706.

## DISTRICTING AND APPORTIONMENT COMMISSION

Staff Receives Training...The Districting and Apportionment Commission staff has received training on the new autoBound redistricting software and awaits final release of the 2000 TIGER line files and the P.L. 94-171 population data in order to complete the final database for congressional and legislative redistricting.

To Meet in Helena...The next Districting and Apportionment Commission meeting will be on November 16. The meeting will be in Helena with the exact location to be announced. The Commission will adopt its criteria for redistricting and choose a starting point.

Staff Appointed to National Task Force...Susan Byorth Fox, Legislative Research Analyst, has been appointed as Staff Co-Chair to the Redistricting Task Force of the NCSL Assembly on State Issues. She will participate on the Steering Committee and assist in the planning of Task Force meetings. The redistricting world is tuning up for the 2001 round of congressional and legislative redistricting based on the 2000 census, and the issues are in the forefront of many legislator's minds. Ms. Fox is a nonpartisan staff analyst to the Montana Districting and Apportionment Commission. Montana is only one of eight states that use a nonlegislative commission for legislative redistricting.

For more information or if you wish to be placed on the interested persons list, please contact Susan Byorth Fox by phone at (406) 444-3597, by e-mail at <[sfox@state.mt.us](mailto:sfox@state.mt.us)>, or by mail to Legislative Services Division, PO Box 201706, Helena MT 59620-1706.

## STATE ADMINISTRATION, PUBLIC RETIREMENT SYSTEMS, AND VETERANS' AFFAIRS COMMITTEE

Committee Makes Recommendations...The State Administration, Public Retirement Systems, and Veterans' Affairs Committee (SAIC) approved several committee bills and adopted a number of retirement policy recommendations during

its September 14-15 meeting.

State Contracting Laws...As a result of the SJR 9 study of state contracting laws, the SAIC is requesting a bill (LC0058) that:

- ▶ generally revises government procurement laws;
- ▶ expands the general application of the procurement laws;
- ▶ clarifies employee and former employee contract involvement restrictions;
- ▶ provides that motor vehicle purchase requisitions may be submitted in the manner specified by the Department of Administration;
- ▶ abolishes the requirement that political subdivisions apply a resident bidder preference for the procurement of goods;
- ▶ clarifies the interest rate on overdue payments under a contract;
- ▶ makes the resident bidder preference for state government procurement of goods reciprocal;
- ▶ abolishes the Montana-made goods preference in procurement;
- ▶ exempts certain purchases from the general requirements of the law;
- ▶ changes the process for challenging a contract solicitation or award;
- ▶ allows alternative purchasing methods;
- ▶ revises sole source purchase criteria; and
- ▶ clarifies the duration of certain contracts.

The SAIC is requesting a general fund appropriations bill (LC0197) to implement its state contracting recommendations for the following:

- ▶ a vendor outreach program and coordination of training for state procurement and contracting staff;
- ▶ a staff certification program;
- ▶ an additional contract manager, contract officer, and assistant position; and
- ▶ an online contracting system.

Disability Benefits...After a study of whether and how to provide disability benefits in the new optional PERS Defined Contribution retirement plan, the SAIC approved a Committee bill (LC0199) to:

- ▶ provide a defined disability benefit in the Defined Contribution retirement plan that is based on the same benefit formula provided under the current PERS Defined Benefit retirement plan (i.e., 1/56th x final average salary x years of service), payable to Defined Contribution plan members with at least 5 years of service who become totally disabled and which will be paid until age 60, when the member reaches the normal retirement age set in the Defined Benefit plan; and
- ▶ to fund the disability benefit from current employer contributions to the retirement plan.

Postretirement Health Care Costs...The SAIC studied various options for helping public employees and retirees finance the escalating costs of health care, including

health insurance, and is recommending a bill (LC0198) to establish the following program available to all public employees:

- ▶ a health care expense trust account program to be centrally administered by the Department of Administration that will contract for services;
- ▶ public employees would petition for employer participation in the program, which will be mandatory if a majority of employees support the program;
- ▶ program participants would have employer contributions made to their individual health care expense accounts in lieu of accumulated sick leave in excess of 120 hours, unless the individual "opts out" of the automatic sick leave conversion;
- ▶ employees could also collectively bargain for additional employer contributions to the health care expense trust accounts;
- ▶ employees participating in the program could manage the investment of their health care expense accounts and would be able to access their accounts to pay for qualified medical expenses that are tax-free under IRS regulations; and
- ▶ assuming a favorable IRS determination to "qualify" the program, all employer contributions, investment earnings, and payments from the accounts would be tax-exempt.

Oversight of Veterans' Issues...The SAIC endorsed the recommendations of the Subcommittee on Military and Veterans' Affairs and agreed to request the following bills:

- ▶ LC0200 requesting a legislative study of certain veteran issues during the next interim;
- ▶ LC0201 providing for the release under certain circumstances of unclaimed veterans' remains to veterans' service organizations so that the remains may be properly interred;
- ▶ LC0202 allowing a 100% disabled veteran to obtain for \$25 any special military license plate, not just the "DV" plate;
- ▶ LC0203 expanding the types of vehicles a 100% disabled veteran may register for \$5 to include a truck of any weight used to pull a travel trailer or motor home; and
- ▶ LC0204 ensuring that a legal resident of Montana who is a military service member or a dependent of a service member does not forfeit the right to a resident hunting or fishing license if the resident receives a resident hunting or fishing license in another state simply by virtue of being in the service or a dependent of a service member.

To Meet Again in November...The SAIC will meet again sometime following the November election in order to visit the Youth Challenge Program in Dillon and to conduct an informational hearing on Disaster and Emergency Services planning and procedures and to review the adequacy of current state statutes.

For further information on SAIC activities, go to the Committee's web site accessible from the Legislative Branch home page at [leg.state.mt.us](http://leg.state.mt.us) or contact Sheri Heffelfinger at (406) 444-3596.

## JUDICIAL REDISTRICTING SUBCOMMITTEE

Subcommittee Makes Recommendation...The Judicial Redistricting Subcommittee met on September 8 and reported its recommendations to the Legislative Council on September 18. The Subcommittee determined that it was not the appropriate time for redistricting judicial districts but that the issue should be continued for study next interim. The Legislative Council accepted the Subcommittee's recommendation and will determine the appropriate committee to continue the study next interim.

In explaining its recommendation, the Subcommittee stated that there are numerous issues within the Judiciary that will be brought before the Legislature this session, including a district court funding proposal, an intermediate appellate court proposal, and a juvenile probation officer funding proposal. In addition, over 30 of the district court judges' offices are up for election this fall. For these reasons, the Subcommittee felt that the redistricting issue should be postponed until next interim.

For more information, please contact Susan Byorth Fox, Research Analyst, Legislative Services Division, (406) 444-3597, or <[sfox@state.mt.us](mailto:sfox@state.mt.us)>.

## BUSINESS, LABOR, AND AGRICULTURE COMMITTEE

Holds Final Meeting...The Business, Labor, and Agriculture Committee held its last meeting on August 31 and September 1 to finalize its recommendations and close the books on a number of other issues worked on during the 1999-2000 interim. The status and text of the bill drafts requested by the Committee can be found at <http://leg.state.mt.us>.

House Bill No. 515.... The Committee adopted two recommendations to address the issues brought forward by the HB 515 study of government competition with private vendors.

LC0122 establishes a full cost accounting pilot program for the Departments of Administration, Commerce, Corrections, Environmental Quality, Public Health and Human Services, and Transportation. The pilot program also affects the Information Services Division and the Central Stores Program housed within the Department of Administration. Throughout the information gathering phase of the study, the Committee heard that identifying the true cost of providing a public service was a critical first step in determining whether in-house providers or private sector providers should be allowed to deliver public services. The preferred method of determining

actual costs was found to be a full cost accounting model where direct and indirect costs are combined to ensure that all costs associated with delivering a service are included. The pilot program was chosen to provide detailed information to the Legislature before requiring all state agencies to conduct full cost accounting.

LC0123 requires all Executive Branch agencies to prepare and submit a commercial services inventory to the Business, Labor, and Agriculture Committee. The Committee is also required to conduct regular public hearings to review and recommend strategies to improve the effectiveness and efficiency of public service delivery. The intent behind the commercial services inventory is to provide agencies and the Legislature with an opportunity to review core missions and determine the most effective and efficient manner in which to allocate resources. This recommendation attempts to formalize a process to address the requirement in HB 515 that called for the identification of services that could be suitable for privatization.

Senate Joint Resolution No. 15....The Workers' Compensation Subcommittee presented its final update and recommendations to the full Committee for its consideration. The Committee approved five of the initial seven recommendations prepared by the Subcommittee.

- ▶ LC0124 increases the weekly benefit rate for permanent partial disability and the maximum weekly permanent partial disability payment.
- ▶ LC0118 reduces the waiting period for receiving total temporary disability payments from 6 to 3 days and provides retroactive compensation from the date of the injury if there is an actual wage loss of greater than 14 days.
- ▶ LC0119 clarifies the criteria required before an insurer can convert temporary total disability or temporary partial disability to permanent partial disability and provides for a 10 week maximum payment of rehabilitation benefits for certain injured workers.
- ▶ LC0125 appropriates \$188, 600 to the Department of Labor and Industry for safety inspections.
- ▶ LC0120 requires insurers to reimburse injured workers for reasonable expenses incurred when traveling to medical providers for treatment.

Senate Joint Resolution No. 21....In April, the Committee, at the urging of several interested persons, recommended that questions raised by SJR 21, a study of incentives to preserve agricultural land and open space, be included in the activities of the newly organized Growth Policy Forum. The Forum is made up of a diverse collection of stakeholders committed to exploring ways to reach agreement on the issues associated with growth and growth management in Montana. Currently, the Forum is in the process of developing alternatives to better address policy questions related to growth management.

Senate Bill No. 11 Activities....On August 31, all seven agencies assigned to the Committee by SB 11, presented information based on five specific Committee

requests. Those requests were:

- ▶ a brief report outlining new budget requests, existing program budget increases, and programs where budget requests have decreased from the previous biennium;
- ▶ a complete and prioritized list of legislation requested by the agency. Items not approved, or even likely to be approved by the Governor's Office should be included;
- ▶ agency generated studies or investigations that address the quality of the services or programs delivered by the agency, results of the study or investigation, recommended action, and a report on whether the recommended actions are being implemented;
- ▶ a report on consumer complaints (if any) and actions taken by the department to resolve problems; and
- ▶ outcomes of the most recent financial and performance audits, recommendations made by the Legislative Auditor, and progress toward implementing the recommendations.

Most agencies did not report any major policy initiatives or new budget requests for the 2001 legislative session. Detailed information on the agency presentations, including written testimony and exhibits, may be obtained by calling Gordy Higgins, Legislative Services Division, at 444-3064.

Other Issues Before the Committee....The Committee also reviewed two policy issues outside of its assigned studies and statutory responsibilities and requested two bill drafts, LC0069 and LC0007, to address the identified problems.

A company located in Gallatin Gateway sought to establish a workers' cooperative where employees received a portion of the company's profits based on the employee's contribution to the operation and the purchase of company "shares". The existing language limited the number of years a cooperative association could remain in existence and set a minimum and maximum price and number of shares that could be offered. The Committee recommended that the limitations be removed and directed staff to revise additional statutory language to ensure that the chapter comported with current drafting style (LC0069).

In September 1999, the closure of the May Technical College, a proprietary postsecondary educational institution in Great Falls and Billings, created a serious problem for students who believed that there was a link between the school and the Montana University System. The students learned that the credits taken at proprietary postsecondary educational institutions are not transferrable to the University System because the University System does not accept credits from schools that are not regionally accredited. Even more devastating, while students who attended these institutions may apply to have their federal loans forgiven as a result of the school's closure, the loan discharge is available only if students have not completed their programs or have not transferred any credits earned at the school to another college. If one credit is transferred, students are required to pay back the

full cost of their loans.

The Committee recommended that the Department of Commerce register each proprietary postsecondary educational institution and secure a surety bond to cover some of the tuition losses experienced by students should the institution shut its doors (LC0007).

If you have any questions about the Committee's activities, or need additional information on any of the adopted recommendations, please contact Gordy Higgins at 444-3064, or by e-mail at <gohiggins@state.mt.us>.

## EDUCATION AND LOCAL GOVERNMENT COMMITTEE

Committee Finishes Interim Work... The Education and Local Government Committee finished its interim work on Friday, September 8. The Committee heard a presentation from the Western Interstate Commission on Higher Education (WICHE), recommended that two pieces of legislation be drafted as Committee bills, received a report from the Commissioner of Higher Education, and heard legislative proposals from state agencies and various education and local government professional organizations.

WICHE Makes Presentation... David Longanecker, Executive Director of WICHE, presented an overview of WICHE and engaged the Committee in a discussion of higher education issues in the western states. WICHE is a policy organization composed of 15 western states that work collaboratively to expand educational access to students all across the western states. WICHE administers four student exchange programs that allow residents of 15 western states to enroll in out-of-state undergraduate, graduate, and professional programs at reduced levels of tuition. Montana is an active participant in the WICHE exchange programs. In 1999-2000, 72 Montana students attended out-of-state programs in six different fields through the Professional Student Exchange Program. Montana sent 44 students to out-of-state institutions via the Western Regional Graduate Program. Three Montanans are supported by the Doctoral Scholars Program, while over 1,200 Montana students participated in the Western Undergraduate Exchange. In addition to Montana students going out-of-state, over 1,000 students from out-of-state attended school in Montana through the WICHE exchange programs.

Mr. Longanecker also spoke of four critical challenges facing higher education in the west:

- increasing demand for higher education in some states and enrollment declines in others;
- focus on quality and innovation;
- financing; and
- assuring accountability.

Committee Recommends Two Bill Drafts...The Committee accepted the recommendation of the Local Government Subcommittee to sponsor a bill draft revising the salary structure for juvenile probation officers (JPOs) (LC0128). This bill draft is a result of the study requested by HJR 38. The bill draft bases the salaries of juvenile probation officers on a percentage of the salary of the district court judge in the judicial district where the JPOs serve. It also provides annual increases based on years of service. The salary of the chief JPOs will be paid half by the state and half by the county or counties that make up the judicial district.

The Committee also agreed to request a bill that revises the out-of-school district tuition laws (LC0173). The bill:

- ▶ eliminates the state payment of tuition for children who cross a county line to attend school outside of their resident school district;
- ▶ requires the state payment of tuition when children must attend school out-of-district because of geographic conditions;
- ▶ allows a school district greater flexibility in granting tuition waivers;
- ▶ allows a school district to place tuition receipts in the over-BASE portion of the district's budget;
- ▶ requires that the state payment of tuition come from the state general fund;
- ▶ eliminates the requirement that the state pay the transportation for students for whom the state pays tuition;
- ▶ establishes the tuition rate statutorily; and
- ▶ allows for the payment of tuition in the year of attendance.

Report From the University System...House Bill No. 2 directed the Montana University System to present a report to the Education and Local Government Committee on the average actual instructional program cost per student credit hour in the Montana University System. At the meeting on September 8, Rod Sundsted, Associate Commissioner for Fiscal Affairs, presented the report.

Commissioner of Higher Education Dick Crofts presented the University System's budget priorities and legislative initiatives for the 2001 legislative session.

Committee Hears Legislative Proposals...The Committee spent much of the afternoon of September 8 listening to legislative proposals from state agencies and professional organizations. The state agencies that made presentations were the Board of Public Education and the Office of Public Instruction. The professional organizations included the:

- ▶ Montana Association of Counties;
- ▶ Montana Association of School Business Officials;
- ▶ Montana Education Association-Montana Federation of Teachers;
- ▶ Montana League of Cities and Towns;
- ▶ Montana Rural Education Association;
- ▶ Montana School Boards Association; and
- ▶ School Administrators of Montana.

Other Business...On the recommendation of the Local Government Subcommittee, the Committee took no action on a bill draft to standardize public notice provisions for local governments (HJR 29). The Committee also voted not to sponsor a bill allowing a county commission to create single-member commissioner districts.

Copies of minutes, bill drafts, and reports are available from Connie Erickson by calling 444-3064 or by e-mail at <[cerickson@state.mt.us](mailto:cerickson@state.mt.us)>. Information is also available on the Committee's website at <http://leg.state.mt.us>. Click on "Committees" then "Education and Local Government" to access the Committee's website.

## THE BACK PAGE

### EXCUSE ME, WHERE'S THE NEAREST BATHROOM? TERM LIMITS AND THE FRESHMAN EXPERIENCE

By Leanne Kurtz, Research Analyst  
Legislative Services Division

#### INTRODUCTION

You have read and reread the materials sent in the mail welcoming you, telling you where to park and what time to be there. Sure you've been in the building before, but this time will be different. This time you are no tourist. The doors are heavy and swing open only with effort, hinting at the gravity of the new role you have assumed. The first thing you notice when you walk in is that the place has a distinct smell and feel to it. The second thing you notice is that the place resembles one of those bee hives you saw at a science museum years ago--people literally buzzing through the ornately-decorated halls in every direction. You feel like you have been in this situation before and quickly glance around for your locker, for your best friend, for the "GO WILDCATS" poster and the flyer that reads "Marching Band Tryouts Today at 3:30". You are a freshman, but this isn't the first day of high school. This is the first day of the legislative session. The similarities between the two will occur to you many times during your first term, but now's not the time to reminisce. Now is the time to figure out where the bathrooms are.

The plight of the freshman lawmaker is well-known, but in sessions past, a freshman could rely on the sage counsel of his or her senior colleagues--many of whom had served several terms and attained leadership positions--to learn how best to navigate the labyrinthine legislative process. Details such as how to get a bill drafted and how to shepherd it through the system, what the party caucus is for, lobbyist strategies, how the Legislative Branch interacts with the Executive and Judicial Branches, and the role of the press were passed down through legislative generations as the need arose. Between what they could learn from their fellow legislators and party leadership and what staff could impart through brief 1-day orientation courses, the handful of freshmen who appeared on the Capitol steps each session stood a fighting chance against the tidal wave of process, tradition, and information that threatened to overwhelm them. But change is in the air, the tsunami is gaining strength, and doing things the way they have always been done isn't going to be good enough anymore.

## TERM LIMITS

The Montana Legislature is on the cusp of a sea change--a transition that began in 1992 when the people of Montana passed Constitutional Initiative No. 64 by a margin of nearly 2 to 1,<sup>1</sup> joining 16 other states in instituting term limits for elected officers. Five more states joined the club from 1993 to 1996. Since 1996, state Supreme Courts have thrown out voter-enacted term limit laws in three states: Nebraska in 1996, Massachusetts in 1997, and Washington in 1998,<sup>2</sup> leaving a total of 18 states with term limits on the books. Term limit laws in California and Maine have been impacting those states since 1996, followed by Arkansas, Colorado, Michigan, and Oregon, whose legislatures first realized the change in 1998.

## MOTIVATIONS FOR ENACTING TERM LIMITS

Half of the states with legislative term limits are located in the western region of the country with a voting populace that had been expressing negative feelings toward government in general when term limits were enacted. A survey of legislators, legislative staff, and lobbyists conducted by the Council of State Governments (CSG) in 1997<sup>3</sup> indicates that while voters in states with successful term limit movements had negative feelings toward government, they did not necessarily believe that the legislative institution, a political party, or an individual politician was corrupt. CSG also found "no evidence to support the notion that states with the largest proportion of legislators who had long-term tenure tended to adopt term limits more frequently than citizen legislatures made up of part-time lawmakers where turnover rates are relatively higher."

A similar conclusion was reached by political scholar Malcolm Jewell following a state-by-state study he conducted and discussed in an October 1993 edition of "Oklahoma Politics". "Originators and the organized supporters of the term-limitation movement in most of the states are not motivated by disillusionment with the

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<sup>1</sup> The vote was 264,174 in favor; 130,695 against.

<sup>2</sup> The Nebraska high court struck down Measure 408 because it imposed term limits on city and county officials, state legislators, U.S. senators and representatives. The court said it could not separate the imposition of term limits of state legislators in the constitutional amendment from those imposed on members of Congress, and the U.S. Supreme Court had declared term limits for members of Congress unconstitutional.

The Massachusetts and Washington term limits were instituted through statutory changes rather than constitutional amendments. The high courts in those states ruled that the legislature does not have the authority to alter the qualifications of state officers that are prescribed by the state constitution.

Maine, Wyoming, Idaho, and Utah have term limits by statutory provisions. The rest of the states have amended their constitutions.

<sup>3</sup> Keon S. Chi and Drew Leatherby. *Solutions: Policy Options for State Decision-Makers*, Vol. 6, Issue No. 1, February, 1998, published by the Council of State Governments.

legislative process. They are concerned with the legislative product: the substantive character of laws passed by state legislatures," Jewell notes, adding that state legislative term limit campaigns began in many states in response to high state and local taxes and too much government regulation of business.

## PROS AND CONS

Whatever their motivation, 264,174 Montanans in 1992 believed that the state's elected officials needed only so much time in office to effectively fulfill their duties. The debate rages on about whether term limits will help or harm the legislative process, if not democracy in general. No one denies that term limits have brought about dramatic changes in California, Maine, and several other states where the law has been impacting the legislative process for years, but disagreement over whether or not those changes are beneficial will likely continue ad infinitum. In 1997, CSG assembled legislators, staff, and political scholars to debate the merits of term limits and discuss appropriate policy responses. The arguments for and against term limits that emerged during that gathering are as follows.<sup>4</sup>

### FOR:

- ▶ More competitive elections
  - Term limits promote democracy by ensuring more competitive elections because there will be more open seats.
- ▶ Elected executive officials
  - Places similar restrictions on legislators that exist for executive officials--most governors and other elected executive branch officials are term limited.
- ▶ New talent and fresh blood
  - Under term limits, more candidates, including more women and minorities, will run with new ideas as citizen representatives.
- ▶ Incumbency advantages
  - Without term limits, capable people are discouraged from running against long-time incumbents because of high campaign costs and lack of name recognition.
- ▶ Ability and effectiveness
  - With term limits, legislators' ability and effectiveness will replace seniority as a qualification for leadership positions.

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<sup>4</sup>Ibid.

- ▶ Policy work  
Under term limits, legislators will focus more on policy work and less on being reelected.
- ▶ Special interest groups  
Term limits will discourage the 'cozy' relationships between legislators, lobbyists, and bureaucrats.
- ▶ Careerism  
Legislative service was never intended to be a career, but rather a civic duty, and legislatures should be composed of people whose futures lie outside of legislative service.

**AGAINST:**

- ▶ Rights of voters  
Term limits are undemocratic because such measures deny the rights of voters to elect experienced legislative candidates they like to elect.
- ▶ High turnover  
Legislative turnover as a result of voluntary retirements and defeat at the polls already limits tenure.
- ▶ Experience and institutional memory  
Term limits will eliminate experienced legislators with institutional memory and legislative history.
- ▶ Governors  
Even if executive term limits are a good idea, applying such measures to legislatures will give governors too much power.
- ▶ Leadership  
With term limits, inexperienced legislators may attain leadership positions before they are prepared.
- ▶ Lobbyists and staff  
Under term limits, lobbyists and legislative staff members will exert greater influence on legislators.
- ▶ Special interest groups  
There is no guarantee that the new breed of legislators would be less dependent on special interest group money for their reelection bids.
- ▶ Constituent service  
Imposing automatic lame-duck status on legislators would make them less

responsive to their constituents.

#### NATIONAL CONFERENCE OF STATE LEGISLATURES TERM LIMIT STUDY<sup>5</sup>

To determine whether the arguments either for or against term limits hold true in the states that find themselves dealing with the law and to help those states effectively respond, the National Conference of State Legislatures (NCSL) has undertaken a study. The study is focusing on five states in separate geographic regions and in various stages of term limit implementation--Colorado, Maine, Michigan, Oregon, and Arkansas.

NCSL has been gathering focus groups and interviewing legislators, staff, political scientists, lobbyists, and journalists to describe effects of term limits, describe efforts to address the effects, and offer recommendations. NCSL's long-term goals for the study include developing a database of comparative legislative information, monitoring the effects of term limits through periodic interviews and data gathering, periodically convening focus groups, and producing reports and articles. NCSL is also conducting an ongoing opinion survey about term limit effects, the results of which will be incorporated into the study. The survey can be completed on NCSL's website at [www.ncsl.org](http://www.ncsl.org).

Preliminary findings<sup>6</sup> based on the information gathered to date in the five study states support the arguments of both the term limit proponents and opponents. It is safe to say results are mixed, and NCSL staff conducting the study stress that impacts must be measured over the long term.

Overall Preliminary Findings: Governors are stronger; legislative leaders are weaker and less experienced; the influence of lobbyists is mixed; Senates have the more experienced members; budget processes are more open; legislatures have performed effectively.

Impacts on the Composition of the Legislature: There are more ideological, single issue members; there is a greater pressure to move from the House to the Senate, with a few Senators moving to the House; women have made gains in the Maine Senate; party candidate recruitment efforts have been enhanced; states noticed an increase in turnover before the term limit effective date.

Impacts on Legislative Operations: Inexperience and lack of understanding of

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<sup>5</sup>Information on the NCSL study is derived from materials provided by NCSL at the July 2000 Annual meeting in Chicago.

<sup>6</sup>"Preliminary Findings" data drawn from materials provided during the presentation "The Effects of Term Limits on State Legislatures; Interim Report, NCSL Annual Meeting, July 2000".

the rules and procedures has impeded efficiency; committees are less effective; committees are more inclusive to give new members experience; old ideas that had previously failed are raised again; legislatures have adjourned early or on time and have passed budgets on time; the influence of the Senate has increased; new members are less deferential and have a sense of urgency; there is a marked loss of institutional memory.

Impacts on Legislative Leadership: Members jockey for leadership positions in their first term; leadership is finding it difficult to sanction members; a second year leader is a lame duck; new leaders are less effective due to the steep learning curve; leaders are seeing an increase in administrative duties; leaders are being selected before existing leaders' terms have ended.

Impacts on Policy: There has been no observable difference on "pork"; the Executive Branch has been stronger in the budget process; policy committees have been more involved in the budget process; newer members have been deferential to the governor's bills; legislatures are losing members who are policy experts.

Impacts on the Legislative Institution: The Executive Branch has gained power; while the lobby has gained power in providing information, lobbyists must work harder to build new relationships; staff workload has increased; legislator orientation and training is enhanced.

## MONTANA RESPONDS TO TERM LIMITS

The Montana Legislature will see a 33% turnover rate in the House and a 28% turnover rate in the Senate as a result of term limits. Total turnover will likely be higher due to resignations and election losses. At its September 1999 meeting, the Legislative Council engaged in strategic planning, identifying and prioritizing several issues needing attention. The top three priorities reflect, in part, attempts to respond to the impacts of term limits.<sup>7</sup>

Priority #1: Educate the public about the legislative process, what term limits mean, and how the budgeting process works.

The Council authorized a study of televising the Legislature as one way to educate the public and regain public trust and faith in the institution. The 2001 session will be the inaugural session for "Txv", gavel-to-gavel coverage of the 57th Legislature.

Priority #2: Develop a new-legislator training program.

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<sup>7</sup>Montana Legislative Council Strategic Issue Priorities, September 21, 1999.

The Council appointed a subcommittee to plan new-legislator orientation.

Priority #3: Promote legislator interaction with legislators in other states.

The Council is committed to exploring opportunities for interaction with other states and enhancing legislator education.

Term limits were also part of the impetus behind 1999's Senate Bill No. 11 (SB 11), the legislation that created permanent interim committees with statutory responsibilities. A primary goal of SB 11 was to provide stability and continuity in structure to counter the anticipated fluidity in membership that accompanies high turnover.

Some states have gone so far as to appoint interim committees to discuss the effects of term limits and develop recommendations. Revising legislative rules, revamping committee structures, changing procedures, enhancing technology, and even encouraging the use of sunset legislation<sup>8</sup> are all strategies that have been recommended and are being incorporated in term limit states.

## NEW LEGISLATOR ORIENTATION AND LAW SCHOOL FOR LEGISLATORS

Here in Montana, a new legislator orientation has been in the works and is scheduled for Wednesday through Saturday, November 29 through December 1, 2000. Legislative staff have held legislator orientation classes in the past, but these have generally been half-day to 1-day events describing the services provided to legislators and how bills are drafted. The Fiscal Division and the Legislative Library (now the Legislative Reference Center) have also held separate introductory sessions for legislators unfamiliar with the process. This year, not only has new legislator orientation been expanded and fleshed out, the State Bar in conjunction with the Legislative Council is holding a "Law School for Legislators". Presenters, exact times, and locations are still being finalized for the orientation and law school, but participants can look forward to the following kinds of sessions:

### New Legislator Orientation

- ▶ overviews and perspectives from current and former long-term members of the Legislature;
- ▶ how the Legislature interacts with the Executive and Judicial Branches and with tribal governments and local governments;
- ▶ legislator benefits, payroll, and housing;
- ▶ facilities and staff of the House and Senate;
- ▶ a tour and history of the Capitol including Legislative Services, Fiscal, and

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<sup>8</sup>The reasoning is that sunset provisions in legislation will help combat problems associated with the loss of institutional memory by forcing future legislatures to revisit statutes inherited from their predecessors who may no longer be serving.

- Audit Division offices, the cafeteria, and bathrooms;
- ▶ how an idea becomes a bill and how a bill becomes a law;
- ▶ how to deal with lobbyists, constituents, and staff;
- ▶ research resources for legislators;
- ▶ Legislative Services, Fiscal, and Audit staff services information and what is and is not appropriate staff service;
- ▶ leadership powers and duties;
- ▶ the role of the caucus;
- ▶ communicating with the media; and
- ▶ the role of the lobbyist.

#### **Law School for Legislators**

- ▶ presumption of constitutionality;
- ▶ the meaning of constitutional law, case law, statute law, common law, and administrative law;
- ▶ statutory construction;
- ▶ the role of the lawyer lobbyist;
- ▶ tribal law;
- ▶ a primer on the Montana Constitution;
- ▶ the structure of the Judicial Branch and its relationship with the Legislature; and
- ▶ Attorney General opinions.

Both the orientation and the law school will be designed to be interactive. Organizers are striving to avoid the lecture or "talking head" format as much as possible, opting instead for discussions, role playing, tours, and a mock floor session and mock committee hearings. Some of the topics will be offered as plenary sessions and others as concurrent sessions, allowing participants to choose the issues most important or interesting to them. Information about the orientation and law school will be sent to all current legislators and legislative candidates prior to the November election and to all of the members of the 57th Legislature following the election. If you have questions about orientation or the Law School for Legislators, contact Bob Person or Leanne Kurtz at the Legislative Services Division, (406)444-3064.

#### **CONCLUSION**

Like it or not, term limits are here to stay and, for better or worse, the law will change the face of the Montana Legislature. Will the regular supply of fresh blood be healthy for the institution or will it make the patient falter? Will each new crop of freshman legislators adopt an aggressive Survivor-esque philosophy to "Outwit, Outplay, Outlast" their colleagues or will the atmosphere resemble more of a Walton's Christmas special? Only time will tell. What is certain is that in years to come, more Montanans than ever before will have the opportunity to coast into their

own personal parking spot, pry open the heavy oak doors, endure those first-day-of-school jitters, and memorize the locations of the fresh, white, newly-appointed Capitol bathrooms.



## INTERIM CALENDAR

UNLESS OTHERWISE SPECIFIED,  
ALL ROOM DESIGNATIONS ARE IN THE CAPITOL BLDG.

### OCTOBER

October 2, Legislative Finance Committee, Room 102, 1 p.m.

October 3, Legislative Finance Committee, Room 102, 8 a.m.

October 9, Columbus Day observed, holiday

October 19, Income Tax Subcommittee

October 19, Motor Vehicle Revenue Distribution Subcommittee

October 20, Revenue and Taxation Committee, Room 172, 8 a.m.

### NOVEMBER

November 7, Election Day, holiday

November 10, Veterans' Day observed, holiday

November 16, Districting and Apportionment Commission

November 16, Legislative Audit Committee, Room 152

November 16-17, Legislative Finance Committee, Room 137

November 17, House of Representative's Caucus, 4 p.m.

November 18, Senate Caucus, 8 a.m.

November 23, Thanksgiving, holiday

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